



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
 REGION 10  
 1200 Sixth Avenue  
 Seattle, Washington 98101

**URGENT LEGAL MATTER  
 PRIORITY OVERNIGHT MAIL REQUESTED**

Robert Foster  
 Trial Attorney  
 U.S. Department of Justice  
 1961 Stout Street  
 Eighth Floor  
 Denver, CO 80294

MAY 03 2006

Bernard K. Schafer  
 Office of Property Disposal  
 General Services Administration  
 1800 F Street NW  
 Washington, D.C. 20405-0001

Re: Notice of Potential Liability for the Portland Harbor Superfund Site; Portland, Oregon

Dear Mr. Foster and Mr. Schafer:

In December 2000, the United States Environmental Protection Agency ("EPA") sent out General Notice Letters ("GNLs") informing potentially responsible parties ("PRPs") at the Portland Harbor Superfund Site (the "Site") located in Portland, Oregon, that they may be liable for money expended by EPA for response actions at the Site under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), commonly known as the federal Superfund law. At that time, EPA also offered the PRPs the opportunity to take action necessary to abate any releases or threats of release of hazardous substances from the Site or to reimburse EPA for response actions undertaken.

This letter notifies the General Services Administration (GSA) of potential responsibility for response costs incurred in the Portland Harbor Superfund Site and to request that the GSA participate in the ongoing studies being undertaken, referred to as the remedial investigation and feasibility study (RI/FS). In response to the notice letters issued in 2000, 10 cooperating notice letter recipients entered into an Administrative Order on Consent ("AOC") with EPA for the performance of a RI/FS for the Site. These cooperating parties, along with five other notice letter recipients, have formed a coalition of private and public entities, known as the Lower Willamette Group ("LWG"), to jointly perform the RI/FS pursuant to the AOC. EPA is now providing the GSA an opportunity to join in the investigation of the Site.

USEPA SF



1225593

The parties who signed the AOC have conducted, with EPA oversight, extensive data collection and evaluation efforts. However, more data collection and analysis is required to determine the nature and extent of contamination and evaluate the risks to human health and the environment at the Site. RI/FS and PRP search efforts to date have confirmed the GSA's potential liability for the contamination at the Site. Therefore, EPA is requesting that the GSA become a cooperating party for the RI/FS by participating in the LWG and entering into the AOC. A copy of the AOC is attached for your review.

### **Explanation of Potential Liability**

Under Section 107(a) of CERCLA, PRPs may be held liable for all costs incurred by the EPA (including interest) in responding to any release or threatened release of hazardous substances at the Site, unless the PRP can show any of the statutory defenses to liability. CERCLA PRPs include current and former owners and operators of a facility, as well as persons who arranged for treatment and/or disposal of any hazardous substances found at the Site, and persons who accepted hazardous substances for transport and selected the Site to which the hazardous substances were delivered.

Based on the information that EPA evaluated during the course of its investigation of the Site, EPA believes that the GSA may be liable under Section 107(a) of CERCLA, with respect to the Site, based on its or its predecessors' former ownership of facilities within the Site. Specifically, EPA has reason to believe that hazardous substances have been and/or are being released from Swan Island, the former Oregon Shipbuilding Corporation facility, and the former Willamette Iron and Steel Corporation facility in Portland, Oregon, into the "study area" for the Portland Harbor Superfund Site, as defined under the AOC.

### **Settlement Opportunity**

As noted earlier, an opportunity exists for the GSA to become a cooperating party. There are advantages to joining the RI/FS process. By joining the RI/FS, the GSA will have an ability to shape the investigation and remedial alternatives that will be evaluated when EPA selects a remedy for the Site. Remaining outside of the process limits the GSA's opportunity to have a meaningful role in the critical decisions leading up to the development of the Proposed Plan.

Further, the LWG is beginning an allocation discussion in which they will develop a proposed allocation scheme for sharing costs of the RI/FS and remedial action among all identified PRPs. Even if the GSA does not participate in the allocation, it is likely that it will be assigned a share in that process. Accordingly, it would be in the GSA's interest to be an active participant to ensure that its interests are fairly represented. Moreover, participating in the cleanup process will facilitate resolution of all viable PRPs' shares of responsibility for investigation and cleanup costs outside of court.

Respondents to the AOC also receive the benefit of obtaining an administrative settlement with EPA for the RI/FS work and costs. Such a settlement confers the right to seek contribution from third parties for costs exceeding a cooperating parties' fair share to the extent provided by the

Superfund law. The AOC also provides statutory protection from third parties' lawsuits seeking contribution of their RI/FS costs.

If the GSA chooses not to join in the RI/FS by becoming a signatory to the AOC, EPA has the option of issuing an order under Section 106 of CERCLA, 42 U.S.C. 9606, or proceeding under other available statutory authority.

We strongly encourage you to contact the LWG to discuss the GSA's participation as a cooperating party for the performance or funding of the AOC. You may do so by contacting:

David Ashton  
Port of Portland  
P.O. Box 3529  
121 NW Everett  
Portland, OR 97208  
(503) 944-7090  
[david.ashton@portofportland.com](mailto:david.ashton@portofportland.com)

William F. Joyce  
Salter Joyce Ziker, PLLC  
1601 Fifth Avenue, Suite 2040  
Seattle, WA 98101  
(206) 9575951  
[wjoyce@sjzlaw.com](mailto:wjoyce@sjzlaw.com)

EPA understands that the LWG will soon be issuing an invitation for the GSA and other PRPs to attend an informational meeting to discuss the LWG's past and ongoing activities and your potential participation in performing or funding the RI/FS. EPA representatives intend to participate in portions of such a meeting.

### **Reply Instructions**

EPA asks that you provide a written response to this request for the GSA to become a cooperating party before June 22, 2006. Your written response should be submitted to:

U.S. Environmental Protection Agency  
Attn: Elizabeth McKenna, Attorney  
Office of Regional Counsel  
1200 Sixth Avenue, M/S ORC 158  
Seattle, Washington 98101

Contacting Mr. Ashton or William Joyce alone will not be considered a sufficient response to EPA. If a response from you is not received by June 22, 2006, EPA will assume that the GSA has declined this offer to become a signatory to the AOC and EPA may pursue available enforcement authorities.

Questions may be directed to Ms. McKenna by contacting her at (206) 553-0016. At your request, Ms. McKenna will provide you with a standardized "letter of intent" for acknowledging your intent to engage in good faith negotiations to become a cooperating party and become a respondent to the existing AOC.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel D. Opalski", written in a cursive style.

Daniel D. Opalski, Director  
Office of Environmental Cleanup

Enclosure:

Administrative Order on Consent